


***TD 94/D97 - Income tax: capital gains: does subsection 160M(12) of the Income Tax Assessment Act 1936 prevent a taxpayer from making an election under subsection 160ZZQ(11A) in respect of a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?***

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This document has been finalised by TD 95/7.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

## Draft Taxation Determination

**Income tax: capital gains: does subsection 160M(12) of the *Income Tax Assessment Act 1936* prevent a taxpayer from making an election under subsection 160ZZQ(11A) in respect of a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?**

1. No. Provided the other requirements of subsection 160ZZQ(11) are satisfied, a taxpayer can, in relation to an SPR that he/she owned before becoming a resident of Australia, make an election in accordance with subsection 160ZZQ(11A).

2. Although for Australian tax purposes subsection 160M(12) deems an acquisition date for certain assets on a non-resident becoming an Australian resident taxpayer, it does not mean that the assets were not **owned** by the taxpayer before the taxpayer became a resident. If the taxpayer owned a dwelling overseas and it ceased to be the taxpayer's SPR on the taxpayer becoming an Australian resident, paragraph 160ZZQ(11)(a) can apply.

*Example:*

*In March 1991, Sarah, a UK resident, moved permanently to Australia. She was unable to sell her UK home (which she had bought in 1987) before her departure. As a result, Sarah decided to rent the property. She did not purchase an SPR in Australia.*

*In April 1993, her tenant made an offer to purchase the UK property. Sarah accepted the offer and settlement took place the following month.*

*In her 1992-93 income tax return, Sarah made a valid subsection 160ZZQ(11A) election to exempt from tax the capital gain that accrued in relation to the UK property from March 1991.*

**Commissioner of Taxation**

15/9/94

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